Supreme Court, U.S.
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No.

**IN THE SUPREME COURT OF THE UNITED STATES**

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Lindsey K. Springer,

**Petitioner,**

v.

Alabama, a Union State, et al.,

**Respondents.**

*Appendix A*

ON WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

LINDSEY K. SPRINGER,
Plaintiff,

FILED 11-9-99

V.

Case No. 99-CV-3-BU

ALABAMA, a Union State, et al.,
Defendants.

O R D E R

This matter comes before the Court upon the motions to dismiss filed by Defendants, Maryland, West Virginia, Oklahoma, Minnesota, Connecticut, Montana, Indiana, Hawaii, New York, Rhode Island, Kansas, Nevada, Texas, California, Arizona, Vermont, Ohio, Colorado, Pennsylvania, Missouri, South Carolina, Kentucky, Massachusetts, North Dakota, Oregon, Alabama, Illinois, North Carolina, Arkansas, Alaska, Maine, Washington, New Mexico, Tennessee, Michigan, New Hampshire, Florida, Georgia, Wisconsin, Nebraska, Louisiana, South Dakota, Utah, New Jersey, Mississippi and Delaware (Docket Entries # 325, 328, 329, 330, 331, 333, 336, 340, 341,

343, 346, 350, 354, 355, 361, 362, 365, 366, 367, 369, 370, 373, 375, 376, 378, 379, 380, 382, 386, 387, 390, 393, 394, 397, 399, 401, 402, 403, 404, 407, 412, 419, 425, 435, 438 and 451). Plaintiff, Lindsey K. Springer, has responded to the motions and upon due consideration of the parties' submissions, the Court makes its determination.

Plaintiff brings this action against all fifty states pursuant to 42 U.S.C. § 1983 seeking declaratory and injunctive relief. Specifically, Plaintiff seeks a declaratory judgment finding that states' election laws are unconstitutional and an injunction directing each state to place Plaintiff's name on the 2000 presidential election ballots to be distributed to each state's appointed Electors.

In their motions, Defendants request dismissal of Plaintiffs action on various grounds. One of the grounds raised by all Defendants is that Plaintiff's action is

barred by the Eleventh Amendment. Upon review, the Court concurs with Defendants and concludes that Plaintiff's action is precluded by the Eleventh Amendment. Because this issue is dispositive of Plaintiff's action, the Court shall not address the other grounds raised by Defendants in support of dismissal.

The Eleventh Amendment provides:

> The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted by Citizens of another State, or by Citizens or subjects of any Foreign State.

U.S. Const. Amend. IX. The Supreme Court's decisions establish that the Eleventh Amendment restricts federal jurisdiction not only over suits brought against a state by citizens of another state but also over suits brought against a State by its own citizens. Pennhurst State School & Hosp v. Halderman, 465 U.S. 89, 98, 100(1984); Hans v. Louisiana, 134 U.S. 1, 10(1890). This

jurisdictional bar applies regardless of the nature of the relief sought against a State. Pennhurst, 465 U.S. at 100.

The sovereign immunity afforded by the Eleventh Amendment, is not absolute. In Clark v. Barnard, 108 U.S. 436, 447(1883), the Supreme Court held that if a state waives its sovereign immunity and consents to suit in federal court, the Eleventh is not a bar. A State's waiver of Eleventh Amendment immunity, though, is not easily presumed. Any waiver by a state must be unequivocally expressed. Edelman v. Jordan, 415 U.S. 651, 673(1974)(a state's waiver of Eleventh Amendment immunity occurs only where stated by the "most expressive language" or by such "overwhelming implications" as will leave no room for doubt). Furthermore, "constructive consent" by a state is not sufficient to overcome sovereign immunity. Id. In addition, the Supreme Court has held that Congress may abrogate Eleventh Amendment

sovereign immunity without the state's consent. Fitzpartrick v. Bitzer, 427 U.S. 445, 456(1976). However, "Congress must express its intention to abrogate the Eleventh Amendment in unmistakable language in the statute itself." Atascadero State Hosp. v. Scalon, 473 U.S. 234, 243(1985). The Supreme Court will not infer Congressional abrogation of the Eleventh Amendment. Pennhurst, 465 U.S. 99.

In the instant case, Plaintiff has not cited to or referred to any state statutes or constitutional provisions wherein Defendants have expressly waived Eleventh Amendment immunity for Plaintiff's claims in this action. Atascadero, 473 U.S. at 238 n.1 (a state may effectuate a waiver of sovereign immunity by a state statute or constitutional provision). Nevertheless, Plaintiff, citing to Quern v. Jordon, 440 U.S. 332, 342(1979), suggests that a state's Eleventh Amendment immunity may be impliedly waived and that

Defendants have impliedly waived their Eleventh Amendment immunity or consented to suit by "acting outside [their] immunity." However, as previously discussed, a state's waiver of Eleventh Amendment immunity must be unequivocally expressed. Edelman, 415, U.S. 673. Quern does not, as suggested by Plaintiff, stand for the position that a state's waiver or consent to suit may be implied. Therefore, the Court finds that Plaintiff has failed to establish an effective waiver of sovereign immunity by Defendants.

Next, the Court must consider whether Congress has abrogated the state's sovereign immunity in unmistakable language in 42 U.S.C. § 1983. The Court finds no such unmistakable language in the statute. Furthermore, the court notes that the Supreme court has specifically held that Congress did not abrogate Eleventh Amendment immunity when it enacted § 1983. quern, 440 at 345.

In addition, the Court notes that the Supreme Court has held that a state is not a "person" for a purpose of a claim brought under § 1983. Will v. Michigan Department of State Police, 491 U.S. 58, 65(1989). In his response brief, Plaintiff argues that because Defendants raised as one of their ground for dismissal a lack of jurisdiction over their persons, the states are also to be considered "persons" for purpose of § 1983. Plaintiff, however has not cited any authority for his position. As the Supreme Court has specifically held that a state is not a person within the meaning of § 1983, the Court finds that Defendants' Fed.R.Civ.Pr. 12(b)(2) motions to dismiss for lack of personal jurisdiction do not constitute a waiver of the sovereign immunity afforded by the Eleventh Amendment for Plaintiff's action under § 1983.

In his response brief, Plaintiff additionally argues that because he only

seeks declaratory and prospective injunctive relief, the Eleventh Amendment does not bar his suit. However, as previously discussed, regardless of the nature of the relief sought against the state, the Eleventh Amendment prohibits suit in federal court against a state without its consent. Pennhurst, 465 U.S. at 100. While the Court recognizes that the Supreme Court has held that a suit may be brought against state officials in their official capacities for prospective injunctive relief, Ex parte Young, 209 U.S. 123, 155-56(1908), Plaintiff has not brought an action against state officials in their official capacities for prospective injunctive relief. Rather, he has brought an action against the fifty states themselves.

Because Defendants have not unequivocally waived their Eleventh Amendment immunity and Congress has not abrogated that immunity in its enactment of 42 U.S.C. § 1983, the Court finds that Plaintiff's suit

against Defendants is barred by the Eleventh Amendment and that Defendants' motions should be granted.

The Court notes that four defendants, Idaho, Iowa, Virginia and Wyoming, have not filed motions to dismiss. The Court, however, exercises its discretion and raises the Eleventh Amendment bar sua sponte as these Defendants. Mascheroni v. Board of Regents of University of California, 28 F. 3d,1554, 1558-1559(10th.Cir. 1994). For the same reasons above-stated, the Court finds that the Eleventh Amendment precludes Plaintiff's action against these Defendants and dismissal of the action against them is appropriate.

Based upon the foregoing, the motions to dismiss filed by Defendants, Maryland, West Virginia, Oklahoma, Minnesota, Connecticut, Montana, Indiana, hawaii, New York, Rhode Island, Kansas, Nevada, Texas, California, Arizona, Vermont, Ohio, Colorado,

Pennsylvania, Missouri, South Carolina, Kentucky, Massachusetts, North Dakota, Oregon, Alabama, Illinois, North Carolina, Arkansas, Alaska, Maine, Washington, New Mexico, Tennessee, Michigan, New Hampshire, Florida, Georgia, Wisconsin, Nebraska, Louisiana, South Dakota, Utah, New Jersey, Mississippi and Delaware (Docket Entries # 325,328, 329, 330, 331, 226, 340, 341, 343, 346, 350, 354, 355, 361, 362, 365, 366, 367, 369, 370, 373, 375, 376, 378, 379, 380, 382, 386, 387, 390, 393, 394, 397, 399, 401, 402, 403, 404, 407, 412, 419, 425, 435, 438 and 451) are **GRANTED**. The action of Plaintiff, Lindsey K. Springer, against these Defendants and Defendants, Idaho, Iowa, Virginia and Wyoming, is **DISMISSED** for lack of subject matter jurisdiction.

In light of the Court's dismissal of Plaintiff's action, the Court **DECLARES MOOT** Defendant, Louisiana's Motion to Dismiss for Failure to Comply with March 4, 1999, court

Order Directing Plaintiff to Serve Defendants with Amended Complaint on or before March 31, 1999 in accordance with Applicable Federal Rule Provisions(Docket Entry # 409) and Plaintiff, Lindsey K. Springer's Motion for Temporary Restraining Order and Preliminary Injunction (Docket Entries # 457-1 and # 457-2).

ENTERED this 9th day of November, 1999.

Michael Burrage
United States District Judge

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

LINDSEY K. SPRINGER,
Plaintiff-Appellant, No. 99-5227
v D.C. No. 99-CV-3-BU
STATE OF ALABAMA, et al.,
Defendants-Appellees

MARCH 24, 2000

ORDER AND JUDGEMENT

Before **Baldock, Henry and Lucero,** Circuit Judges.

Plaintiff-appellant Lindsey Springer brought suit against all fifty States alleging that their ballot access laws violate his constitutional rights. Holding that these claims were barred by the Eleventh Amendment immunity, the district court ruled in favor of forty-six defendants that filed motions to dismiss and dismissing the remaining claims sua sponte. We affirm and order Springer to show cause why we should not impose sanctions.

Springer apparently sent a letter to the appropriate officials in each of the fifty States asserting he will be thirty-five years of age by January 20, 2001, is a natural born

citizen, and has always resided in Oklahoma, and on that basis requested that his name be placed on the primary and general election ballots for President of the United States. The several States either rejected or ignored the request. As he has done so often, Springer responded by filing this instant lawsuit in federal court.

In general, the Eleventh Amendment bars suits in federal court against non-consenting States. See Seminole Tribe of Florida v. Florida, 517 U.S. 44, 54, (1996). Springer advances several meritless arguments as to why his own suit against every State in the Union is not so barred. It does not matter that Springer is seeking only declaratory and injunctive relief, because "the relief sought by a plaintiff suing a State is irrelevant to the question whether the suit is barred by the Eleventh Amendment." Id @ 58 Nor has he shown that the States have waived their immunity; there has been no express waiver,

and a "state...does not waive Eleventh Amendment immunity merely by appearing a suit." Mascheroni v. Board of Regents of the Univ. of California, 28 F.3d 1554, 1560(10th Cir. 1994). Likewise, his assertion that 42 U.S.C. § 1983 abrogates the Eleventh Amendment is baseless. See Quern v. Jordan, 440 U.S. 332, 343-45(1979).

Springer's assertions that the district court abused its discretion when it dismissed sua sponte his claims against four defendant States on Eleventh Amendment immunity grounds is equally meritless. See Mascheroni, 28 F.3d. at 1559. Because the application of Eleventh Amendment immunity is dispositive of Springer's Claim, we do not address the additional issues raised on appeal.

We find Springer's claim to be wholly without merit, and we consider the outcome of the appeal to have been so obvious as to render it frivolous. This is not the first time Springer has filed a meritless action in

federal court or brought a frivolous appeal. See Springer v. Infinity Group, No. 98-5182, 1999 W: 651391(10th Cir. Aug. 26, 1999)(affirming the district court's dismissal for failure to state a claim)(unpublished); Springer v. I.R.S., No. 5072, 1996 WL 164459(10th Cir. April 8, 1996)(imposing sanctions for frivolous appeal)(unpublished); cf Springer v. Hustler Magazine, No. 5117, 1999 WL 970242 at *1n1(10th Cir. October 28, 1999)(affirming dismissal on summary judgment and noting that two arguments on appeal were "utterly without merit")(unpublished); Buckner v. United States, No. 98-5057, 1999 WL 61071(10th Cir. Feb. 4, 1999(noting that the district court had granted summary judgment against the plaintiffs, including Springer, on their claim that federal taxation amounted to involuntary servitude)(unpublished). We possess the inherent power to impose sanctions to regulate our docket, promote

judicial efficiency, and deter frivolous filings. See Van Sickle v. Holloway, 791 F.2d 1431, 1437(10th Cir. 1986). "This Court need not endure baseless, repetitive appeals serving only to waste the resources of the court and the appellees." Smith v. Rubin, No. 97-1242, 1998 WL 99019, at *4(10th Cir. March 9, 1998)(unpublished). Therefore, we order Springer to show cause why he should not be sanctioned in the amount of $ 1000, payable to the Clerk of the United States Court of Appeals for the Tenth Circuit, as a limited contribution to the United States for the cost and expenses of this action, and be prohibited from filing any further complaints in the United States District Court, in any civil matter, excluding habeas corpus petitions, until he has filed with the clerk of this Court a notarized affidavit, in proper legal form, stating that he has satisfied this sanction.

Accordingly, we direct the clerk of this

Court to issue an order requiring Springer to show cause why the above sanction should not be imposed. Springer's response shall not exceed five pages. If the response is not received by the Clerk within ten days of the issuance of the order, the sanction shall be imposed and the clerks of this Court and United States District Court for the Northern District of Oklahoma are directed to return any prohibited filings to Springer.

We AFFIRM the judgment of the district court. The mandate shall issue forthwith.

ENTERED FOR THE COURT

Carlos F. Lucero
Circuit Judge.

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

LINDSEY K. SPRINGER,
Plaintiff-Appellant,
v No. 99-5227
STATE OF ALABAMA, et al.,
Defendants-Appellees.

APRIL, 2000

ORDER

The Court ordered Plaintiff-Appellant Lindsey Springer to show cause why we should impose a $ 1000 sanction in favor of the Court. The Court finds the sanction should be imposed. The Clerk is directed to refuse any filing of Mr. Springer until he has complied with this Order. (emphasis added)

The Court

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

LINDSEY K. SPRINGER,

Plaintiff-Appellant,

v. No. 99-5227

STATE OF ALABAMA, et al.,

Defendants-Appellees

APRIL 19, 2000

ORDER

Your petition for rehearing En Banc was submitted to each Judge in active service with the Tenth Circuit Court of Appeals and no judge requesting a poll to be taken, your petitioner rehearing En Banc is denied.

The Court.